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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

Situation in East Timor

Report of the Secretary-General

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Introduction

1. At its 60th meeting, on 24 April 1998, the Chairman of the Commission on Human Rights made a statement on behalf of the Commission (E/1998/23-E/CN.4/1998/177, para. 416). In that statement, the Commission welcomed the report of the Secretary-General, the work of his Special Representative, in particular the establishment of regular dialogue at senior official level, and the continuing all-inclusive intra-East Timorese dialogue. The Commission also requested the Secretary-General to keep it informed of the situation of human rights in East Timor.

2. The present report has been prepared pursuant to this request.

I. UPDATE ON THE GOOD-OFFICES ACTIVITIES OF THE SECRETARY-GENERAL CONCERNING THE QUESTION OF EAST TIMOR

3. The attention of the Commission on Human Rights is drawn to the progress report of the Secretary-General on the question of East Timor (A/53/349) of 10 September 1998 on the activities undertaken in the framework of his continuing good offices.

4. In the preceding year, significant progress had been achieved, through the good offices of the Secretary-General aimed at finding a just, comprehensive and internationally acceptable solution to the question of East Timor. The negotiations, under his auspices, between the Governments of Indonesia and Portugal, which he conducts in close consultation with East Timorese leaders of all political trends, have produced important results and the final stages of a settlement of the problem have begun to take a discernable shape. Agreement has now been reached between the Indonesian and Portuguese Governments to consult the East Timorese people to determine whether they would accept a proposed plan that would give East Timor an autonomous status within the unitary State of Indonesia or opt for a transition to independence. The popular consultation will be conducted in a direct ballot to be conducted by the United Nations in the next few months.

5. During the reporting period, the Secretary-General has continued to facilitate the All-inclusive Intra-East Timorese Dialogue (AIETD), an initiative which began in 1995 within the framework of his good offices on East Timor. With the support of the Austrian Government and a number of other Member States, a fourth meeting of the AIETD was held in Krumbach, Austria, from 31 October to 3 November 1998 with the attendance of 41 participants. The meeting, the first to be held since the advent of the reform era in Indonesia, was an occasion for a lively and open discussion on a diverse range of issues of major importance for the present and the immediate future of East Timor. While the meeting did not issue a formal declaration, it achieved a large degree of consensus on a number of important matters.

6. In February 1999, in response to the Secretary-General's repeated appeals for the release of the East Timorese resistance leader, Jose Alexandre "Xanana" Gusmão, serving a 20-year prison term in Jakarta, the Indonesian

Government transferred Mr. Gusmão to a residence in Jakarta, with a view to facilitating his participation in the efforts to resolve the question of East Timor. This step has enabled Mr. Gusmão to have greater access to his followers, other East Timorese leaders and interested parties. The Secretary-General's Personal Representative and other United Nations officials frequently visit Mr. Gusmão in the context of the Secretary-General's intensified consultations with East Timorese leaders. The Secretary-General has expressed his appreciation for this important step by the Indonesian Government while he continues to call for the release of Mr. Gusmão and all remaining political prisoners. He is also encouraged by the constructive and conciliatory role being played by Mr. Gusmão and other prominent East Timorese figures.

II. ACTIONS TAKEN BY THEMATIC SPECIAL RAPPORTEURS AND WORKING GROUPS OF THE COMMISSION ON HUMAN RIGHTS CONCERNING EAST TIMOR

Working Group on Arbitrary Detention

7. The Working Group on Arbitrary Detention visited Indonesia from 31 January to 12 February 1999, at the invitation of the Indonesian Government. The delegation was composed of the Vice-Chairman of the Working Group, Mr. Louis Joinet (head of delegation), and Mr. Roberto Garretón, and two staff members from the Office of the High Commissioner for Human Rights. Preliminary observations of the Working Group on its visit to Indonesia and East Timor will be made available and circulated during the fifty-fifth session of the Commission on Human Rights.

The Special Rapporteur on violence against women, its causes and consequences

8. At the invitation of the Indonesian Government, the Special Rapporteur on violence against women, Ms. Radika Coomaraswamy, with two staff members from the Office of the High Commissioner for Human Rights, visited Indonesia from 20 November to 6 December 1998. She spent three days in East Timor (see E/CN.4/1999/68/Add.1 and Add.3).

Special Rapporteur on torture

9. Information regarding the action taken by the Special Rapporteur on torture with regard to East Timor is described in his report to the Commission (see E/CN.4/1999/61). The Special Rapporteur points out in his report that his outstanding request for an invitation to visit Indonesia remains without positive response.

Special Rapporteur on extrajudicial, summary or arbitrary executions

10. The Special Rapporteur in his report to the Commission (E/CN.4/1998/39 and Add.1) states that reports continue to be received concerning human rights abuses in East Timor. It is alleged that police forces, which are still overseen by the military, purposely target political protesters who are often

arrested and ill-treated, sometimes resulting in their death. Furthermore, it is reported that investigations into these incidents are rarely carried out and their perpetrators are almost never held accountable for their actions.

Working Group on Enforced or Involuntary Disappearances

11. Information regarding the action taken by the Working Group on Enforced or Involuntary Disappearances with regard to East Timor is included in its report to the Commission (E/CN.4/1999/62). Between December 1997 and December 1998 the Working Group transmitted to the Government of Indonesia, nine newly reported cases of disappearance in East Timor.

Annex I

INFORMATION PROVIDED BY THE GOVERNMENT OF INDONESIA

By note verbale dated 18 December 1998, the Permanent Mission of Indonesia to the United Nations Office at Geneva submitted a document to the Office of the High Commissioner for Human Rights entitled "Human Rights Situation in East Timor: Information provided by the Government of the Republic of Indonesia to be incorporated into the report of the Secretary-General on the situation in East Timor, at the fifty-fifth session of the Commission on Human Rights". That document is reproduced below.

"Introduction

"1. Indonesia is now undergoing an unprecedented major political change. Unhindered practice of the freedom of speech and open criticism, the omnipresence of public demonstrations, the release of political prisoners, the emergence of more than 50 new political parties and the ever growing number of human rights activists are now matters of everyday realities. The new Reform Government led by President Habibie [...] endeavoured to bring forward its ability to answer the daunting challenges of leading the country in the midst of economic turmoil and mounting social problems.

"2. In his national address before the House of Representatives on 15 August 1998, President Habibie pledged to lead and carry out total reforms in all fields, notably in the political, economic and legal sectors. The objectives of the reforms are to restore the socio-economic life, to enhance democratic political life, and to enforce the laws. With the reforms, President Habibie intends to lay down a new legal and political infrastructure that will allow democracy and respect of human rights to flourish and it is expected that this will also further facilitate a sustainable economic development in Indonesia. On the same occasion, President Habibie also expressed his deepest regrets for the human rights violations done by personnel of the State apparatus in the past. He further stressed that, in line with the spirit of reformation, the new Government would continue to take firm and concrete actions to address wide-ranging human rights issues in order to respect the dignity of mankind.

"3. Along with the ardent and fully-committed endeavours of the Indonesian Government of President Habibie for the promotion and protection of human rights, there is an ever increasing awareness of human rights among Indonesian people. More Indonesians are able to engage not only in the discourse of human rights but also in promoting and protecting human rights through active and practical measures. The creation of organizations aimed at promoting and protecting human rights by the Indonesian people is the most apparent feature of their active participation. What is more, the Indonesian people, through their representatives in the People's Representatives Assembly, have taken a firmer position regarding the promotion and protection of human rights. On 13 November 1998, the People's Representatives Assembly adopted Decree No. XVII/MPR/1998 on Human Rights stipulating the need to adopt a

new law as the legal basis of the National Commission on Human Rights. The Decree also contains the Indonesian Charter on Human Rights which undoubtedly attests to the strong commitment of the Indonesian people to promote and protect human rights.

"4. The Government has also launched a new initiative in the search for a settlement in the East Timor question and, in this context, has undertaken significant measures to promote and protect human rights and further enhance confidence-building in the province.

"Measures to improve the promotion and protection of human rights

"5. In line with the recommendations of the Vienna Declaration and Programme of Action 1993 and the result of the Second National Workshop on Human Rights held in 1994 by the Government of Indonesia, the National Commission on Human Rights and the United Nations, Indonesia formulated the National Plan of Action on Human Rights 1998-2003. The Plan, which consists of concrete steps to be conducted at the national level for the next five years, was officially launched by President Habibie on 25 June 1998. To implement the programme of activities of the Indonesian National Plan of Action on Human Rights, a National Committee on Human Rights composed of government officials and representatives of the community was established by Presidential Decree No. 129 of 15 August 1998. The systematic and comprehensive implementation of the Plan is expected to help promote a culture of respect for human rights.

"6. The Indonesian National Plan of Action on Human Rights consists of four main pillars: first, the ratification of international human rights instruments; second, the dissemination of information and education on human rights; third, the implementation of priority issues on human rights, especially the protection of 'non-derogable rights'; and fourth, the implementation of the international human rights instruments that have already been ratified.

"7. In accordance with the first pillar of the Plan, on 28 September 1998, President Habibie approved the legislation for the ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Act No. 5 of 1998). The Government has also completed the draft law for the ratification of the International Convention on the Elimination of All Forms of Racial Discrimination which should soon be submitted to parliament. In 1999, the Government will also prepare for the ratification of the International Covenant on Economic, Social and Cultural Rights and also consider the ratification of the International Covenant on Civil and Political Rights.

"8. Indonesia has long been fully committed to the promotion and protection of basic human rights stipulated in ILO core conventions. Such a devotion is reflected by the steady and gradual ratification of ILO core conventions. By November 1998, Indonesia had ratified ILO Conventions No. 29 on Forced Labour, No. 87 on Freedom of Association and Protection of the Rights to Organize, No. 98 on Right to

Organize and Collective Bargaining, and No. 100 on Equal Remuneration Convention. The present Government is preparing the ratification process of three other ILO core conventions: No. 105 on Abolition of Forced Labour, No. 111 on Discrimination (Employment and Occupation), and No. 138 on the Minimum Age of Employment on Work.

"Cooperation with United Nations human rights mechanisms

"9. The Government of Indonesia is fully committed to cooperating with all the United Nations human rights mechanisms, as it demonstrated, inter alia, by always providing the latter with any information they may request and will continue to be at their disposal to do so. That commitment to further cooperation is indicated by activities as follows:

a. At the invitation of the Government, Special Rapporteur on violence against women and its causes, Ms. Radhika Coomaraswamy, visited Indonesia from 20 November 1998 to 4 December 1998. During her visit, Ms. Radhika Coomaraswamy also went to East Timor province. In fact, the Government also invited the Special Rapporteur on racism, racial discrimination and xenophobia, Mr. Glélé-Ahanhanzo to join Ms. Coomaraswamy in her mission to Indonesia, but he was not able to do so due to his commitments in his own country and abroad.

b. Pursuant to the Chairman's Statement on East Timor issued at the fifty-fourth session of the Commission on Human Rights, the Government invited the Working Group on Arbitrary Detention to visit East Timor before the fifty-fifth session of the Commission, and after having been postponed by the Working Group, the visit will hopefully be conducted in early February 1999.

"10. On 13 August 1998, the Government of Indonesia and the Office of the High Commissioner for Human Rights concluded a MOU on technical cooperation in the field of human rights. Through this MOU, the Office of the High Commissioner for Human Rights would be able to render contributions in the form of technical assistance to the Government of the Republic of Indonesia based upon the needs and priorities of the Government. It has also been agreed that a programme officer will be assigned to implement specific projects of the technical cooperation programme. In performing his/her task of implementing the programme of technical cooperation agreed upon by both parties, the programme officer will have access to all parts of the country, including East Timor. A project document for the implementation of the MOU on Human Rights cooperation between the Government of Indonesia and the Office of the High Commissioner for Human Rights has been proposed and is now under study by both parties.

"EAST TIMOR

"11. President Habibie has made the resolving of the East Timor question as one of his priorities. Major political changes in Indonesia and more comprehensive and concrete human rights policies have brought about a significant shift to the government policy on the East Timor

issues. In line with its commitment to promote and protect human rights, the Government has drawn up a systematic programme to review cases of detention and imprisonment on political grounds decided by the previous Government. In this connection, more than 100 detainees and prisoners, including East Timorese, have already been pardoned and amnestied.

"12. The East Timorese detainees and prisoners who are amnestied and pardoned are as follows:

The following individuals were amnestied on the basis of Presidential Decree No. 85 of 9 June 1998:

- Cancio Antoni HG
- Bendito Amaral
- Thomas Agusto Coreira
- Hermenegildo Dacosta
- Jose Gomes
- Luis Pereira
- Antonia Gusmão Freitas

The following individuals were pardoned on the basis of Presidential Decree No. 85 of 9 June 1998:

- Juvinal Dos Santos Monis
- Fransisco de Dens
- Domingos Da Silva
- Silverio Babtista Ximenes
- Vicente Marques Da Crus
- Bernadino Simao
- Paulo E. Silva Carvalho
- Paulo Scares

The following individuals were granted amnesty on the basis of Presidential Decree No. 123 of 15 August 1998:

- Pedro da Luz
- Moises Freitas Marreira
- Marcelino Fraga
- Manuel de Silva
- Alexio F. Cortereal
- Akau de Costa alias Macau Metan

The following individuals were pardoned on the basis of Presidential Decree No. 123 of 15 August 1998:

- David Dias Ximenes
- Salvador da Silva
- Gasfar da Silva
- Bobby Xavier Luis Pereira

The Government of Indonesia, will soon amnesty and pardon another 28 East Timorese detainees and prisoners and will continue the consideration of releasing other East Timorese detainees and prisoners.

"13. It is worth citing that four East Timorese, namely Domingus Natalino da Silva, Joaquin Santana, Fernao Malta Correira Lebre and Ito Salvador Mirando, who had been detained and tried for their alleged involvement in bomb-making activities in Demak, were freed by the Court of Semarang in May 1998.

"14. With regard to prisoners and detainees in East Timor, the Government of Indonesia appreciates the continued cooperation with the International Committee of the Red Cross (ICRC), and particularly the latter's continued assistance in the efforts to further improve the living conditions of prisoners and the sanitation of prisons. The Government continues to grant the ICRC regular access to prisoners and detainees everywhere in Indonesia and particularly in East Timor. During their visits, the ICRC delegates are granted free access to anyone they wish to meet. Both the Government and the ICRC continue to work closely on the humanitarian front to clarify inaccurate information regarding the circumstances of prisoners and detainees, or to examine other allegations of human rights abuses, such as the case of unfounded allegations of 'massacres' in Alas, East Timor, in November 1998.

"15. The Government has decided to gradually reduce the military personnel assigned to the province. By mid-August 1998, as many as 1,300 combat troops were withdrawn from the province. Those remaining are mostly territorial troops engaged in civil duties, such as voluntary public works in agriculture, construction, irrigation, fighting illiteracy, building churches, roads and bridges, helping the social welfare of villagers, etc. The withdrawal of troops will take place according to the condition and the situation in the province. It is also the policy of the Government to ensure that the reduction of military personnel is carried out responsibly, taking into full account the interest of maintaining public order in the province and in full recognition of the fact that the physical threat against the people of the province by armed separatist guerrillas still exists.

"16. While the government security forces have been observing a high degree of self-restraint, the armed separatist groups have abused the position of the government security forces by waging their campaigns of violence, terror and intimidation against innocent civilians and Indonesian military units. Their manoeuvres lead to the increasing number of cases of gross human rights violations. And as a result, many East Timorese now live in a dangerous and insecure atmosphere, some in a

climate of fear. The increasing violent activities undertaken by a separatist group which calls itself 'Falintil' have caused 26 deaths since January 1998, including 9 soldiers, and 17 civilians, and have inflicted serious injuries on scores more (see Annex). The most recent incident is the senseless shooting to death of a schoolteacher in his classroom and in front of his students - the victim was murdered simply because he was known for his pro-integration stance. These activities are also accentuated by a campaign of misinformation, such as clearly reflected in the case of Alas, where fabricated rumours of 'massacres' led to the temporary suspension of the tripartite negotiation in New York. The Alas episode is yet another lucid example of international public opinion being victimized by the black propaganda of the separatists.

"17. The Indonesian Government condemns these barbaric acts and calls for all sides to maintain a peaceful atmosphere and self-restraint. In this regard, Bishop Carlos Filipe Ximines Belo has urged the East Timorese to comply with the Universal Declaration on Human Rights and told them that human rights violations were committed not only by the military but also by local youths and the armed Falintil group. Furthermore, Bishop Belo conveyed his appreciation that the Armed Forces leadership in East Timor had called on its members to avoid human rights violations and asked both parties to exercise self-restraint and to conduct dialogue.

"18. It is clear that these provocations and attacks, apart from showing complete disregard for human lives, and the misinformation campaign which accompanies them, are also aimed at sabotaging the negotiating process to settle the East Timor issue. It is worth mentioning that in June 1998, the Indonesian Government proposed to grant 'special status to East Timor with wide-ranging autonomy' as part and parcel of a mutually agreed final solution to the East Timor question. This proposal is now being discussed between the Governments of Indonesia and Portugal under the auspices of the United Nations Secretary-General in what is commonly known as the tripartite negotiations. This new initiative demonstrates again the sincerity and determination on the part of Indonesia to seek a peaceful and durable solution.

"Conclusion

"19. The Indonesian Government will remain fully committed to the promotion and protection of human rights in the country, including in the province of East Timor, as the promotion and protection of human rights becomes one of the hallmarks of the new Government's drive for national reform for a better governance in response to the aspirations of the Indonesian people. Nonetheless, the Government is deeply concerned with the rising human rights violations by separatist groups in East Timor. These acts are not only perpetrated as a form of political intimidation but are also aimed at harming the efforts to find a peaceful solution. The international community should, in the strongest term, condemn these acts whenever they occur.

Geneva, December 1998

"ANNEX

INCIDENTS OF ARMED ATTACKS, MURDER AND OTHER VIOLENT ACTS PERPETRATED BY THE ARMED SEPARATIST GROUP IN EAST TIMOR, JANUARY-NOVEMBER 1998

"1. January 1998

The armed separatists attacked civilians travelling on a minibus in Venilale village, district of Baucau and killed 1 person and injured 13 people, among those were teachers, women and children.

"2. February 1998

a. On 6 February 1998, about 20 members of the armed separatist group attacked Madebau village in Bobonaro district and shot a farmer named Joao Maia.

b. On 24 February 1998, the member of the said group shot to death a 21-year-old youth, named Apolinaro Scares in Namane village, district of Baucau.

"3. March 1998

a. On 6 March 1998, a civilian named Martinus was attacked and killed by about 10 members of the armed separatist group in Urahou village.

b. On 12 March 1998, a civilian named Crisfin was stabbed to death by a member of the same group in Hotokesi village, district of Liquisa and on 16 March 1998, some members of the group perpetrated hostility in the Leotela village and stabbed to death a 28-year-old civilian named Martino.

c. On 21 March 1998, some members of that group ambushed the Poetete village in the district of Ermera causing the death of one member of the security personnel and wounded another person.

"4. April 1998

a. On 4 April 1998, a member of the group ambushed the house of a member of the security apparatus in the district of Baucau and shot him along with his wife and 2 children, placing them in a critical condition.

b. On 15 April 1998, the members of the group shot to death a civilian named Julio Martin in Afielo village, district of Ermera.

"5. May 1998

On 11 May 1998, the members of the group attacked a farmer named Anasio da Costa Meskowita in the district of Viqueque. On the same

day, about 15 members of the group killed a women and her 7-year-old child in their house in the district of Liquisa.

"6. June 1998

a. On 28 June 1998, 60 members of the group attacked the residence of the Head of the Manatuto district. In this regard, 6 members of the group were arrested namely:

(1) Nicolau dos Santos of Manatuto district;

(2) Fransisci Scares of Viqueque district;

(3) Filisciano Batista of Manatuto district;

(4) Adelino da Santos of Manatuto district;

(5) Sanco Finto, aged 25, of Manatuto district;

(6) Frorindo Batuto of Manatuto district;

b. On 29 June 1998 a member of the security apparatus was injured when he was on duty to escort members of the European Parliament who were visiting the province to hold a meeting with Bishop Nascimiento of Baucau.

"7. July 1998

a. On 8 July 1998, the residence of the Head of Ainaro district was destroyed by the separatist group.

b. On 9 July 1998, about 8 members of the group attacked a member of the security apparatus in Becora village, Dili and also attacked 3 members of the security apparatus who were on duty in the district of Covalima. They are all now in critical condition.

"8. August 1998

a. On 9 August 1998, the member of the group attacked and harmed 2 members of the security apparatus in the district of Bobonaro. They were all seriously injured.

b. On 16 August 1998, about 40 members of the group attacked and injured 2 members of the security apparatus who were off duty in the district of Ailiu.

c. The same incident occurred when 2 members of the group attacked and injured a member of the security apparatus who was on duty in the district of Ermera by members of the group.

d. On 29 October 1998, members of the group attacked a military post in Betano village, district of Manufahi and killed 2 members of the military apparatus, namely, Zaenudin and Abdul Latif, one civil servant, an engineer from the Department of Public Works, named Prabowo.

e. On 30 October 1998, 14 members of the group attacked and killed a member of the security apparatus, named Yosep Flodndo Periera in Leorema village, district of Liquisa.

"9. November 1998

a. On 3 November 1998, members of the group killed a civilian named Dominggus Costa in the district of Baucau. On the same day, members of the group attacked a member of the security apparatus, named Christovo da Costa, placing him in a critical condition in hospital.

b. On 5 November 1998, members of the group killed a civilian, named Ricardo da Silva in the district of Viqueque.

c. On 9 November 1998, the group attacked the local military post in the village of Alas, Manufalfi, Regency, killing 3 military personnel namely, Petrus, Bere, Kalestro Homay and Ebody da Costa and one civilian. Two military personnel were taken hostage.

d. On 19 November 1998, members of the group killed Ernesto da Costa, member of Komoro village administration, when he visited the district of Baucau. This act has been widely condemned by community members."

Annex II

INFORMATION PROVIDED BY THE GOVERNMENT OF PORTUGAL

On 7 December 1998, the Government of Portugal sent to the Office of the High Commissioner for Human Rights a memorandum containing information about human rights issues in East Timor. That memorandum is reproduced below.

"1. Action undertaken by the fifty-fourth session of the Commission on Human Rights

"At the last session of the Commission on Human Rights, the lack of any improvement of the human rights situation in East Timor led to the negotiation of a Chairman's Statement on the situation of human rights in East Timor which was adopted by consensus. As in previous years, after expressing its deep concern at the reports of violations of human rights in East Timor and recalling the commitments undertaken by Indonesia in Statements agreed by consensus at previous sessions, the Commission stressed the need for their implementation. The several undertakings reiterated by the Government of Indonesia concerned: (1) the early trial and release of East Timorese detained or convicted for political reasons; (2) the further clarification of the circumstances surrounding the violent incident that took place in Dili in November 1991; (3) the full cooperation with the Commission and its thematic Rapporteurs and Working Groups; (4) the invitation of the Working Group on Arbitrary Detention to visit East Timor in advance of the fifty-fifth session; (5) the greater access to East Timor by the international media and international humanitarian organizations; (6) the assignment to Jakarta of a programme officer of the Office of the UNHCHR, within the framework of technical cooperation and the access of this officer to East Timor.

"2. The human rights situation in East Timor during the past year

"During 1998, human rights violations in East Timor continued to cause deep concern. In spite of all the commitments once again undertaken by the Indonesian authorities, in particular before the Commission on Human Rights, and despite some apparent improvements related to political changes in Indonesia, serious and systematic abuses of fundamental human rights have continued throughout the Territory.

"Indeed, in 1998, various reliable and independent sources converged in denouncing arbitrary detentions, torture, disappearances and extrajudicial executions. It is evident from all available reports that, during this year, East Timorese continued to live in fear and to remain at the mercy of Indonesian security forces perpetrating abuses with impunity.

"3. The recommendations of the Commission on Human Rights: the clarification of the circumstances of the Dili incident of 1991

"The 1998 Chairman's Statement resulted from the absence of progress on the implementation of previous commitments which aimed at improving the human rights situation in East Timor.

"However, Indonesia has failed to comply with its commitments and has not been able to redress past human rights abuses. The incomplete information concerning the number of people killed, and persons unaccounted for, in the 12 November 1991 incident at the Santa Cruz cemetery in Dili has been a matter of concern for the Commission on Human Rights. All the subsequent Chairman's Statements on the Human Rights situation in East Timor, agreed by consensus at the Commission on Human Rights, as well as the resolutions adopted in 1993 and 1997, call on the Government of Indonesia to further clarify the circumstances surrounding that violent incident. But despite the international attention the incident received, these circumstances - as well as the allegations of subsequent killings by security forces - were never fully investigated. The last Chairman's Statement, adopted on 24 April 1998, seven years after the incident, once more refers to this issue: *'The Commission reiterates the need for further clarification of the circumstances surrounding the Dili incident of 1991'*.

"In declarations published in the Portuguese newspaper 'Expresso' (14 November), Mr. Mario Carrascalão, the Indonesian appointed governor of East Timor at the time of the incident and currently a member of President Habibie's consultative council, recognizes that shortly after the Santa Cruz military shooting of civilians, up to 150 East Timorese were rounded up at two different locations near Dili and summarily executed by the Indonesian armed forces.

"This confirms the information reported by various reliable sources and proves that no significant efforts were made by Indonesia to account for the missing and the dead. Indeed, credible sources have always stated that the number of missing was much higher than the Indonesian official figure; that most of the missing were dead; and that members of the armed forces knew where their bodies were buried. This was denied by the Indonesian authorities.

"Following Mr. Carrascalão's declarations, Portugal wrote to the UNHCHR and to the Special Rapporteur on extrajudicial, summary or arbitrary executions asking them to undertake all necessary efforts for the full investigation of those incidents, namely by seeking a follow-up to the report of the former Special Rapporteur, Mr. Bacre Ndyaie, on his visit to East Timor in July 1994, in light of the new elements set forth by Mr. Carrascalão. Portugal informed the Indonesian authorities of these initiatives, in the framework of the United Nations sponsored talks, and has asked for their full cooperation with the United Nations human rights mechanisms in the clarification of those events.

"In 1994, the Special Rapporteur on extrajudicial, summary or arbitrary executions recommended, in particular, that 'an independent and impartial commission of inquiry should conduct an investigation to determine the circumstances of the killings, the number of persons killed, their identity and the location of the graves as well as the number of missing persons, their identity, their fate and exact whereabouts'. The report of the Special Rapporteur and his recommendations were presented to the fifty-first session of the CHR in 1995. In his report, the Special Rapporteur states: *'the Santa Cruz killings should not be considered a thing from the past, they should not be forgotten ... and it is not too late to conduct proper investigations, to identify and bring to justice the perpetrators, to determine the fate and whereabouts of the missing persons, to grant compensation to the victims or their relatives and to prevent the occurrence of other killings'*. He later asked the Indonesian authorities to allow him to visit East Timor again to follow up the implementation of his recommendations. This request was never answered.

"4. The recommendations of the Commission on Human Rights: the release of political prisoners and the arbitrary detentions

"The release of political prisoners, besides being a commitment reiterated in the Chairman's Statements of the Commission on Human Rights, was a promise by President Habibie after his election in May 1998. It was also one of the commitments undertaken by Indonesia in the framework of the United Nations sponsored talks at the ministerial meeting in August 1998. However, although Indonesia publicly announced its intention to expedite the release of East Timorese political prisoners, implementation of this commitment has been disappointing. In fact, some 25 East Timorese prisoners have been selectively released. Many more, including Xanana Gusmão, remain in detention. According to Minister Alatas himself (The Age, 3 October 1998) as many as 89 East Timorese political prisoners are serving sentences in Indonesia and East Timor. Credible NGOs say this number is much higher. The 'East Timor Human Rights Centre' estimates there are at least 131 East Timorese political prisoners (SPR1/98PR). Other organizations believe the number may be as high as 184 (East Timor Observatory PP01 - 1998/11/05). Unfortunately, it is impossible to determine the exact number, because Indonesia does not allow independent gathering of information and East Timor remains off limits to credible international organizations.

"On the other hand, the recent releases have not been followed by substantial improvements in the human rights situation in the Territory. In fact, while some political prisoners have been released, there is still a persistent pattern of detaining East Timorese opposed to Indonesian rule or suspected of collaborating with the resistance.

"Different sources, including credible NGOs, such as Amnesty International and Human Rights Watch, while noting some signs of greater political freedom in East Timor, report that East Timorese

continue to be persecuted and arbitrarily arrested for the peaceful expression of their beliefs. According to these sources, the reduction of the number of prisoners of conscience is overshadowed by the increase of short term arrests or arbitrary and incommunicado detentions. East Timorese who are suspected of collaborating with the armed resistance suffer continuous harassment. The same sources report that persons are often detained without a warrant and given no reason for their arrest. Most are mistreated for several days, subjected to torture in order to extract information and then released. The recent 'Urgent Action' issued by the International Secretariat of the OMCT on the case of an East Timorese youth, Marcos Belo, is an example of this practice: On 30 September, four East Timorese were arrested in Kaisida, near Baucau, for their alleged involvement in the clandestine resistance. Three of them were released after 12 hours, but Marcos Belo is still in detention and has been denied access to legal representation. The 'East Timor Human Rights Centre' received reports of 69 East Timorese being arbitrarily detained in the month of July 1998 alone.

"5. The excessive use of force by the Indonesian security forces and the excessive military presence in East Timor

"Recent documents leaked to the international media show that, despite the Indonesian Government's claimed reductions, the number of Indonesian military forces deployed to East Timor remained steady and largely out of proportion with the low level of activity by the armed resistance. According to these documents, in August 1998 the total number of Indonesian security personnel was approximately 18,000, or 21,600 if paramilitary units were included. This is undoubtedly a strong contribution to the tension prevailing in the Territory. Deep distrust and fear of the military forces is widespread among the East Timorese. These feelings are caused by the role of the military in the running of government, but above all by their involvement in the pattern of persistent human rights violations in East Timor.

"The recent clashes between the armed resistance and Indonesian security forces in the district of Alas, south of East Timor, are just one more confirmation of the tension in the Territory. In this particular case, reports of news agencies and NGOs state that the incidents were triggered by the killing of three Indonesian soldiers in a clash with the armed resistance on 9 November, at a military post in Alas.

"Four days later, the Indonesian armed forces retaliated against the civilian and defenceless population. Actions by a regular army of a sovereign State Member of the United Nations cannot, under any circumstances, be levelled with the activities of an armed resistance group. On 13 November several soldiers entered the church in Alas and opened fire. The priest and a Sunday schoolteacher were wounded, but managed to escape into the woods. On the same day, the traditional leader (*liurai*) of the village of Taitudak, was killed by Indonesian soldiers. Apparently, these retaliations were part of a larger military

operation which also led to the detention of up to 30 East Timorese and the death of an undetermined number of others. Several houses were burnt, personal property was destroyed and many villagers fled to the surrounding areas, went into hiding for fear of persecution or took refuge in churches and schools. They were assisted by church organizations with food and water supply. Access to the area was forbidden for some days, including to humanitarian organizations. According to some credible sources, as well as to media reports, extrajudicial executions, disappearances and arbitrary detentions occurred in the Alas region during the military operations. Many human rights and humanitarian organizations fear that detainees in military headquarters face torture and ill-treatment.

"On 20 November the Secretary-General issued a statement, expressing that he was 'seriously disturbed by reports of rising tensions and casualties involving civilians in certain areas of East Timor' and informing that the 'United Nations was trying to establish the veracity of those reports'. In face of the seriousness of those allegations, Portugal had also requested a United Nations investigation of the reported events. On 25 November the Secretary-General announced that 'the effort to ascertain the veracity of the reports was continuing' and informed that 'United Nations officials would visit East Timor shortly'. He also welcomed the 'announcement that the Indonesian National Commission on Human Rights would conduct an investigation into the reports'. Minister Alatas' attitude was strikingly the opposite. In fact, Indonesia's Foreign Minister bluntly denied that any military operation had taken place in the district of Alas.

"6. Freedom of expression and association

"Any significant progress in the human rights situation in East Timor cannot be achieved without greater respect for the freedom of expression and association of the East Timorese.

"In June, during the first visit by EU Ambassadors to East Timor, the EU envoys witnessed pro-referendum and pro-independence peaceful mass demonstrations. Indeed, in Dili and in other urban centres, tens of thousands of demonstrators carrying banners calling for a referendum, for independence and for the release of Xanana Gusmão followed the EU delegation. The East Timorese chose to take to the streets to express their aspirations including their wish to fulfil their right to self-determination. In Dili, the police showed some restraint with demonstrators and no incidents occurred but, in Baucau, on 29 June, a demonstrator was shot dead and six were wounded. These incidents received wide coverage in the international news media.

"7. General discontentment

"Asylum bids at western embassies continued during the past year showing the frustration of the younger generation. Since September 1997, six East Timorese asylum seekers are waiting

for departure to Portugal in the Austrian Embassy in Jakarta. The Indonesian authorities do not allow their departure and have announced that two of them should be submitted to the Indonesian police for legal action.

"Although it has been apparently reduced, Indonesian migration into East Timor also continues to be a reason of discomfort and resentment among the East Timorese population who feels that its rights are being infringed upon. In fact, East Timorese feel that they are discriminated against in their own Territory, as Indonesian migrants obtain the best jobs and development opportunities. This feeling is specially strong among the younger generations who are the most affected by the high level of structural unemployment in East Timor. The current economic and monetary crisis in the region could worsen the situation if unrest affects food distribution and medical supplies.

"8. United Nations sponsored talks between Indonesia and Portugal

"The ministerial meeting of August 1998 could well prove to be the turning point in the search for a solution for the problem of East Timor. At that meeting, parties agreed to discuss proposals for a special status, based on a wide-ranging autonomy, for East Timor without prejudice to both parties' basic positions of principle. Another important outcome was the agreement to involve the East Timorese more closely in the search for a solution.

"Indonesia also undertook to expedite the release of East Timorese political prisoners and to reduce the level of its military presence in East Timor. Unfortunately, so far, Indonesia has not heeded to either of these engagements. These measures are crucial for the improvement of the situation in the Territory which would also create a more positive atmosphere for the talks.

"9. Conclusion: human rights monitoring

"Independent observers have expressed concern over the lack of progress on human rights in East Timor, the increasing violations of these rights (such as extrajudicial executions, arbitrary detention and ill-treatment of prisoners), the serious risk that the situation could soon get out of control and end in bloodshed after an Indonesian military crackdown. These concerns highlight the need for Indonesian authorities to fully implement all the recommendations made by the Commission on Human Rights as well as the recommendations contained in the report of the Special Rapporteurs on torture (1992) and on the Special Rapporteur on extrajudicial, summary and arbitrary executions (1994).

"The investigations of incidents should be conducted in an impartial and independent way by Commissions of inquiries and their conclusions published promptly. The establishment of the Indonesian National Human Rights Commission was greeted with satisfaction by the

Commission on Human Rights and while this Commission has made some efforts to investigate human rights violations, according to independent sources, the Commission's office in Dili continues to be ineffective. 'It has limited itself to dealing only with non-political cases and therefore has little impact with regard to the more serious human rights problems in East Timor.' (US State Department report, 1998.)

"The need for a permanent United Nations presence in the Territory to monitor the human rights situation, is more than ever crucial. This permanent United Nations presence would foster a favourable atmosphere for further progress, through the promotion and protection of human rights on the ground."

Annex III

MATERIAL PROVIDED BY NON-GOVERNMENTAL SOURCES

1. Reports about the human rights situation in East Timor were received from several NGOs including Amnesty International, Human Rights Watch, A Paz é Possivel em Timor-Leste (Portugal), East Timor Human Rights Centre (Australia), United Nations Association of Great Britain and Northern Ireland, Australian East Timor Network (AETN), Perhimpunan Bantuan Hukum Dan Hak Asasi Manusia Indonesia, Fédération internationale des ligues des droits de l'homme and East Timor Observatory (Portugal). A summary of those reports is contained in the following paragraphs. Letters were also received from individuals and groups urging the sending of United Nations human rights monitoring and peacekeeping forces to East Timor.

2. Most of the NGOs' reports received alleged that the human rights situation in East Timor continues to deteriorate. One source reported that since November 1998, large numbers of East Timorese villagers had fled their homes and sought shelter in churches and other towns to escape the violence perpetrated by regular Indonesian army forces. However, since January 1999, the violence seems to be attributable mainly to civilian militia and paramilitary groups, armed by the Indonesian army. The source added that on the basis of official statements and information from other sources, it is likely that the Territory will face a humanitarian crisis if the Indonesian army does not disarm the militia. The source also stated that the presence of United Nations peacekeeping forces is crucial to ensure security in East Timor. Also under the supervision of the United Nations, the Timorese armed resistance (Falintil) was urged to disarm simultaneously with the civilian militia.

3. Concern was communicated by one source over the situation of political prisoners who reportedly continue to serve long prison sentences in Kedun Pane, Semarang Java, after unfair trials. It was alleged that these prisoners had been convicted under the Anti-Subversion Law for their involvement in the circumstances that led to the massacre at Santa Cruz cemetery in Dili in November 1991.

4. One source indicated that continued human rights violations are being perpetrated by the Indonesian army and civilian militia in the southern part of East Timor, in Zumalai sub-district. It was reported that at around 10 p.m. on 25 January 1999, an assault was launched by the military against the village of Galitas resulting in the deaths of a man, a pregnant woman and a child. Scores of others, mostly farmers, sustained serious injuries and are currently receiving medical treatment at the Audian Catholic hospital in Santo Paulus. It was also alleged that another six persons, five of whom are children, disappeared in the aftermath of the assault. Several hundred fled their homes in fear of their personal safety, some of whom sought refuge in churches in Suai.

5. Another source indicated that abuses in the Territory are particularly flagrant in the areas of freedom of expression, independence of judges, summary or extrajudicial executions, arbitrary arrests and detention, and violations against women. The primary causes for these types of violation, one source reported, are the wide gap between the letter of the law and practice by the relevant authorities; legislation and regulations that lead to the arbitrary detention of political opponents; the absence of procedural safeguards in the law; the lack of judicial independence; and the absence of a separation between the military and the police.